

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

ALEXANDER AND SUSAN PROUT,
as parents, next friends and legal guardians of
F.P., a minor,

Plaintiffs,

v.

ST. PAUL'S SCHOOL,

Defendant.

Civil Action No. 1:16-CV-00225-PB

**ASSENTED-TO MOTION TO EXTEND DEADLINES TO FILE MOTIONS FOR
SUMMARY JUDGMENT AND FOR PARTIES TO MAKE EXPERT DISCLOSURES**

Defendant St. Paul's School ("Defendant" or the "School"), by and through its undersigned counsel, and with the assent of counsel for the Plaintiffs, hereby moves to extend the deadlines for the parties to file motions for summary judgment and disclose expert witnesses to dates to be set at the December 19, 2017 status conference set in this matter. As grounds for this motion, the School states as follows:

1. The current deadline for the parties to file motions for summary judgment is October 31, 2017. 10/28/16 Endorsed Order Approving Discovery Plan. The current deadline for the School to make its expert disclosures is November 1, 2017. Dkt. No. 19, Discovery Plan at p. 7. The parties believe the deadline for Plaintiffs to disclose experts is to be determined at the status conference. 8/31/17 Order Granting Plaintiffs' Assented-To Motion to Enlarge Expert Disclosure Deadline. However, because the ECF entry granting Plaintiffs' prior motion to extend the deadline to make its expert disclosures states that the Order granted the Plaintiffs' motion to extend the deadline to 12/01/2017 (Dkt. No. 33), the School, at the Plaintiffs' request,

includes a request to set Plaintiffs' expert deadline at the December 19 conference in order to clarify.¹

2. Following a case management conference on September 20, 2017 in which the parties agreed that the case would not be ready for trial in time for the originally scheduled March 2018 trial date, the Court removed the case from the trial calendar. 9/20/17 docket entries. Further, after hearing from the parties as to a number of issues regarding ongoing discovery, the Court set a status conference for December 19, 2017. *Id.* The purpose of the status conference is to evaluate the discovery progress, evaluate whether the depositions which were temporarily stayed may at that point in time move forward, and evaluate whether a new trial date should be scheduled at that time.

3. The parties are proceeding with discovery. However, for the reasons stated in open court at the September 20 case management conference, fact discovery remains ongoing at this time. The parties will not be in a position to file motions for summary judgment by October 31. Further, given ongoing fact discovery, the School will not be in a position to disclose its experts by November 1, especially given that Plaintiffs (with the School's assent) requested and received an extension of time to make their expert disclosures to a time to be determined at the status conference. Dkt. No. 33. The School cannot make its expert disclosures until it has had a

¹ The ECF notice attaching the order states: "ORDER granting [32] Assented to Motion to Extend Time to 12/01/2017 for Plaintiff's Expert Disclosures. So Ordered by Judge Paul J. Barbadoro(js)." The "12/01/2017" date appears to be a reference to how Plaintiffs styled their motion within the ECF system. However, the actual Order linked to in the Court's ECF notice and signed by Judge Barbadoro states: "**ORDERED** that the deadline for Plaintiffs' expert disclosures will be reset at the pretrial conference to be scheduled in this matter." Based on the Order and the fact that it reflects the relief Plaintiffs requested in their motion, as well as their proposed order, the parties understand that Plaintiffs' expert deadline is to be set at the December 19 status conference. However, to the extent Plaintiffs' expert disclosure deadline is December 1, the parties request it be extended to a date to be set at the December 19 status conference.

sufficient opportunity to review Plaintiffs' expert disclosures. Likewise, Plaintiffs will not be in a position to make expert disclosures prior to the December 19 court conference.

4. The School believes, and the Plaintiffs agree, that the most prudent way to proceed is to set new deadlines for the parties to file motions for summary judgment and make expert disclosures at the December 19 status conference. As it stands, global issues regarding the case schedule, including a new trial date and the close of discovery, will need to be discussed at the conference. The parties will work in good faith to come to the conference with an agreement as to the schedule.

5. Pursuant to Local Rule 7.2(a), the extension of time requested will not result in the continuance of any hearing, conference, trial, or any other deadline set forth in the Discovery Plan approved by the Court.

Local Rule 7.1(c) Certification

Plaintiffs concur with the relief sought in this motion.

WHEREFORE, Defendant St. Paul's School respectfully requests that this Court:

- A. Grant this Motion;
- B. Extend the deadlines to file motions for summary judgment and for the parties to disclose expert witnesses to dates to be set at the December 19, 2017 status conference with the Court; and
- C. Grant such other and further relief as is just and necessary.

Respectfully submitted,

ST. PAUL'S SCHOOL,

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: October 30, 2017

By: /s/ Bruce W. Felmly

Bruce W. Felmly, NH Bar No. 787
Michael A. Delaney, NH Bar No. 10504
Jennifer L. Parent, NH Bar No. 11342
Benjamin B. Folsom, NH Bar No. 268352
900 Elm Street
Manchester, NH 03105
T) (603) 625-6464
F) (603) 625-5650
bruce.felmly@mclane.com
michael.delaney@mclane.com
jennifer.parent@mclane.com
benjamin.folsom@mclane.com

ORRICK, HERRINGTON & SUTCLIFFE LLP

Peter Bicks (*pro hac vice*)
Elyse D. Echtman (*pro hac vice*)
T) (212) 506-5000
F) (212) 506-5151
51 West 52nd Street
New York, NY 10019
pbicks@orrick.com
eechtman@orrick.com

CERTIFICATE OF SERVICE

I hereby certify on this 30th day of October, 2017, this document was filed through the Electronic Case Filing System of the United States District Court for the District of New Hampshire and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic Filing (NEF).

/s/ Bruce W. Felmly